

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINGER PETERSON,

Plaintiff,

v.

THE CITY OF FEDERAL WAY, *et al.*,

Defendants.

CASE NO. C06-0036RSM

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on plaintiff's Motion for Partial Summary Judgment on the issue of strict liability, and defendants' Motion for Summary Judgment asking for dismissal of all of plaintiff's claims. (Dkts. #19 and #21). In her motion, plaintiff argues that defendant City of Federal Way ("Federal Way") is strictly liable as a matter of law for the damages suffered after a police dog mistakenly bit her. Defendants respond that the strict liability statute does not apply to defendant Federal Way because the statute is superceded by another statute which grants immunity to dog handlers who are using police dogs in the line of duty. On their own motion, defendants also argue that plaintiff's § 1983 claims fail as a matter of law because there was no seizure under the Fourth Amendment, plaintiff's Fourteenth

1 Amendment claims of excessive force is misplaced, there is no evidence supporting a municipal
2 liability claim against Federal Way, there is no evidence supporting plaintiff's state law claims,
3 and, even if any of these claims were viable, defendant Officer John Clary is immune from
4 liability for both the federal and state claims.

5 For the reasons set forth below, the Court agrees with plaintiff that defendant is subject
6 to strict liability under Washington law, and GRANTS her motion for partial summary
7 judgment. The Court also agrees with defendants that all of plaintiff's remaining claims should
8 be dismissed, and GRANTS their motion for summary judgment.

9 **II. DISCUSSION**

10 **A. Background**

11 This action stems from an incident occurring in the very early morning hours of
12 November 30, 2003, when plaintiff, who was pregnant at the time, was mistakenly bitten by a
13 police dog. The events started when Federal Way K-9 Officer John Clary heard a fellow officer
14 advise dispatch that he had seen a reckless driver northbound on Pacific Highway South. The
15 suspect had collided with a police car and fled the scene. The registered owner of the vehicle
16 had been identified as Rebecca L. Armas, and her physical description on the computer matched
17 the description of the officer's hit and run suspect. In addition, the computer check revealed
18 that Ms. Armas was operating with a suspended license and had two outstanding arrest
19 warrants.

20 Officer Clary located Ms. Armas' abandoned car at the Greystone Apartments. Officer
21 Clary, believing he saw someone flee from a nearby apartment, decided to use his K-9, Dex, to
22 track the person. After searching the apartment and surrounding area, Dex temporarily lost the
23 scent, but picked it up again in the Seatac Village parking lot. Dex performed what is known as
24 a "back track," with Officer Clary following close behind. While Dex was following the scent,
25 he encountered plaintiff about 25 feet away from what was subsequently discovered as Ms.
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1 Armas' hiding place. Plaintiff claims that Dex was off-lead during this encounter, while
2 defendant asserts that Dex was on his 30-foot tracking lead. Officer Clary did not see plaintiff
3 on his initial approach to the parking lot, as he had temporarily lost sight of Dex while he
4 tracked between cars, and plaintiff was on the opposite side of a large truck between other
5 vehicles.

6 Plaintiff alleges that, when Dex encountered her, he bit her on the back of the leg and
7 held her. Officer Clary believes that when plaintiff saw Dex come around the side of the truck,
8 she screamed and jumped backward. That action was perceived by Dex as "furtive" which
9 caused him to lunge and "engage" her. Officer Clary agrees that plaintiff did not "provoke" Dex
10 in any manner. Further, there is no dispute that Officer Clary did not command or encourage
11 Dex to bite plaintiff. Indeed, when he saw that Dex was holding plaintiff, and recognized that
12 plaintiff was not the suspect, he commanded Dex to release her, which Dex did. Officer Clary
13 assert that Dex released his grip "immediately" upon Officer Clary's command. Plaintiff alleges
14 that Officer Clary commanded Dex to release her three times, and, when Dex would not let go,
15 Officer Clary had to physically remove Dex from her leg.

16 Plaintiff was examined by medical personal at the scene, but she was not transported by
17 ambulance to the hospital because her injuries were assessed to be minor in nature. While
18 plaintiff was being examined at the scene, officers learned that Ms. Armas was hiding on the
19 second floor nearby. Police later transported plaintiff to St. Francis Hospital, where she was
20 treated for minor injuries and released.

21 Plaintiff states that she submitted an administrative claim for damages with the City of
22 Federal Way on December 21, 2004. She subsequently filed a Complaint in King County
23 Superior Court. Defendants then removed the action to this Court. The instant motions for
24 summary judgment followed.

B. Summary Judgment Standard

Summary judgment is proper where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The Court must draw all reasonable inferences in favor of the non-moving party. *See F.D.I.C. v. O’Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992), *rev’d on other grounds*, 512 U.S. 79 (1994). The moving party has the burden of demonstrating the absence of a genuine issue of material fact for trial. *See Anderson*, 477 U.S. at 257. Mere disagreement, or the bald assertion that a genuine issue of material fact exists, no longer precludes the use of summary judgment. *See California Architectural Bldg. Prods., Inc., v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987).

Genuine factual issues are those for which the evidence is such that “a reasonable jury could return a verdict for the non-moving party.” *Anderson*, 477 U.S. at 248. Material facts are those which might affect the outcome of the suit under governing law. *See id.* In ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *O’Melveny & Meyers*, 969 F.2d at 747). Furthermore, conclusory or speculative testimony is insufficient to raise a genuine issue of fact to defeat summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 60 F. 3d 337, 345 (9th Cir. 1995). Similarly, hearsay evidence may not be considered in deciding whether material facts are at issue in summary judgment motions. *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 345 (9th Cir. 1995); *Blair Foods, Inc. v. Ranchers Cotton Oil*, 610 F. 2d 665, 667 (9th Cir. 1980).

1 **C. Plaintiff's Motion for Summary Judgment – Strict Liability**

2 The Court first turns to plaintiff's motion for partial summary judgment. Plaintiff asks
3 the Court to rule, as a matter of law, that defendants are subject to strict liability for the dog bite
4 under RCW 16.08.040, which states:

5 The owner of any dog which shall bite any person while such person is in or
6 on a public place or lawfully in or on a private place including the property of
7 the owner of such dog, shall be liable for such damages as may be suffered by
8 the person bitten, regardless of the former viciousness of such dog or the
9 owner's knowledge of such viciousness.

10 RCW 16.08.040. Defendants respond that this statute is superceded by another, and, in any
11 event, plaintiff's claims are time barred by the public duty doctrine. The Court is not persuaded
12 by defendants.

13 In previous cases involving police dogs, this Court has ruled that RCW 16.08.040
14 applies to police dogs. Indeed, in *Smith v. City of Auburn*, Case No C04-1829RSM, this Court
15 followed two recent federal cases, one in this district and one in the Eastern District of
16 Washington, which had previously concluded that the statute applies to police dogs. *Hapke v.*
17 *City of Edmonds, et al.*, C05-0046TSZ; *Rogers v. City of Kennewick, et al.*, C04-5028EFS. In
18 addition, this Court determined that had the legislature meant to except police dogs from the
19 reach of the statute, it could have done so. Furthermore, this Court is not persuaded that RCW
20 4.24.410 supersedes the statute. Indeed, there is no conflict between the two because plaintiff
21 does not contend that Officer Clary owns Dex, and has not pursued a strict liability claim against
22 him. Accordingly, the Court finds that the strict liability statute imposes liability on the City as
23 the owner of Dex.¹

24 Defendants' argument that plaintiff's claims are barred by the public duty doctrine is

25 ¹ Defendants attempt to convince the Court that defendant Federal Way is not the owner of Dex.
26 However, the record makes clear that it is. Defendants admit that the city purchased the dog. Officer
27 Clary also testified at deposition that the city owns the dog. Further, the city pays for dog food, all
28 medical expenses, equipment and veterinarian expenses. Officer Clary is paid a three percent "on-call
29 incentive" for keeping and handling the dog. (Dkt. #20).

1 equally unpersuasive. The public duty doctrine applies to negligence claims. On the instant
2 motion, plaintiff seeks a strict liability determination. Such determination does not depend on
3 whether any duty of care existed between the City and plaintiff, or whether that duty was
4 breached.² Accordingly, plaintiff's motion for partial summary judgment is granted.³

5 **D. Defendants' Motion for Summary Judgment**

6 The Court now turns to defendants' motion for summary judgment, which asks the
7 Court to dismiss all of plaintiff's claims. Defendants argue that plaintiff's federal claims against
8 Officer Clary must fail because there was no "seizure" of plaintiff, and her Fourteenth
9 Amendment excessive force claim is misplaced. Defendants further argue that there is no
10 evidence supporting a municipal liability claim against defendant Federal Way. With respect to
11 plaintiff's state law claims, defendants also argue that those claims must be dismissed as there is
12 no evidence supporting the claims. Finally, defendants argue that Officer Clary is immune from
13 liability for both the state and federal alleged violations in any event. The Court addresses each
14 argument in turn below.

15 *1. Motion to Strike*

16 As a threshold matter, the Court addresses defendants' motion to strike. Defendants ask
17 the Court to strike portions of the declaration of plaintiff's expert witness, D.P. Van Blaricom,
18 submitted in support of her opposition to defendants' motion. Defendants argue that portions of
19 the declaration impermissibly opine on ultimate issues of law. The Court agrees. Paragraphs
20 8(g), 9 and 10 contain legal conclusions as to the amount of force typically used and approved
21 by the Federal Way Police Department, and the amount of force used on plaintiff. Such
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23 ² Although plaintiff phrases her request for relief as seeking a determination that "defendants'
24 actions were negligent and the sole proximate cause of the plaintiff's injuries," it is clear from the motion
25 and supporting argument that she really seeks a strict liability determination, and the Court limits its
26 decision to such determination.

³ To the extent that defendants seek summary judgment that defendant Federal Way is not strictly
liable under the statute, the Court denies that relief for the same reasons.

1 conclusions are not permitted. *Mukhtar v. Calif. State Univ., Hayward*, 299 F.3d 1053, 1065 n.
2 10 (9th Cir. 2002). Accordingly, the Court will disregard these statement when considering
3 plaintiff's arguments.

4 2. Unlawful Seizure

5 Defendants first argue that plaintiff's unreasonable seizure claim must fail because no
6 seizure under the Fourth Amendment actually occurred in this case. The Court agrees. In
7 *Brower v. County of Inyo*, 489 U.S. 593 (1989), the United States Supreme Court explained
8 that:

9 violation of the Fourth Amendment requires an intentional acquisition of
10 physical control. A seizure occurs even when an unintended person or thing
11 is the object of the detention or taking, *but the detention or taking itself must be willful*. This is implicit in the word "seizure," which can hardly be applied to an unknowing act.

12 *Brower*, 489 U.S. at 596 (citations omitted) (emphasis added). The court continued:

13 It is clear, in other words, that a Fourth Amendment seizure does not occur
14 whenever there is a governmentally caused termination of an individual's
15 freedom of movement (the innocent passerby), nor even whenever there is a
16 governmentally caused and governmentally desired termination of an
individual's freedom of movement (the fleeing felon), but only when there is
a governmental termination of freedom of movement *through means intentionally applied*.

17 *Id.* at 596-97 (emphasis in original).

18 In the instant case, there is no question that Officer Clary did not intend to detain
19 plaintiff or otherwise terminate her freedom of movement. He did not command or in any way
20 direct Dex to engage plaintiff. Upon seeing that Dex had seized plaintiff, and recognizing that
21 plaintiff was not the suspect, Officer Clary commanded Dex to release her. Further, Dex is not a
22 government actor and could not possess the necessary intent. *Andrade v. City of Burlingame*,
23 847 F. Supp 760, 764 (N.D. Cal. 1994) (explaining that the relevant question is whether the
24 officer intended to apprehend the plaintiff by using the dog, and finding no seizure when such
25 intent was not present). Therefore, because Officer Clary did not intend to seize plaintiff
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1 through the use of his police dog, there can be no Fourth Amendment violation, and summary
2 judgment in favor of Officer Clary is appropriate.

3 *3. Excessive Force*

4 Defendants next argue that plaintiff's Fourteenth Amendment excessive force claim
5 should be dismissed because such claim is not proper. Plaintiff responds that she has not
6 brought a Fourteenth Amendment claim, but rather seeks to have her excessive force claim
7 analyzed under the Fourth Amendment. While the parties ultimately appear to agree that a
8 Fourth Amendment analysis is the proper one, the Court finds such analysis unnecessary because
9 there was no seizure. *See Robinson v. Solano County*, 278 F.3d 1007, 1018 (9th Cir. 2002)
10 (rejecting excessive force claim because there was no seizure); *Adams v. City of Auburn Hills*,
11 336 F.3d 515, 519-20 (6th Cir. 2003) (same). Accordingly, summary judgment in favor of
12 Officer Clary on plaintiff's excessive force claim is appropriate.

13 *4. Municipal Liability*

14 Defendants next ask the Court to dismiss plaintiff's municipal liability claim against
15 defendant Federal Way. The Court agrees that such action is appropriate. In order to establish
16 municipal liability for an alleged constitutional violation, there must be a constitutional violation
17 to begin with. *Monell v. Dept. of Social Serv's of City of New York*, 436 U.S. 658 (1978). In
18 this case, the Court has dismissed plaintiff's constitutional claims. Therefore, there is no basis
19 upon which to hold Federal Way liable. Accordingly, summary judgment in favor of Federal
20 Way on plaintiff's municipal liability claim is appropriate.

21 *5. State Law Claims*

22 Finally, the Court turns to plaintiff's state law claims. Plaintiff alleges several state law
23 claims against Officer Clary, as well as a failure to train claim against Federal Way.

24 a. Claims Against Officer Clary

25 Plaintiff alleges three claims against Officer Clary: (1) negligent infliction of emotional
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1 distress, or, alternatively, intentional infliction of emotional distress/outrage; (2) false
2 imprisonment; and (3) assault and battery. Defendants argue that Officer Clary is immune from
3 suit on the basis that he is entitled to qualified immunity under state law, and he is entitled to
4 complete immunity from suit pursuant to RCW 4.24.410. The Court agrees that Officer Clary is
5 immune under RCW 4.24.410. That statute provides:

6 Dog handler using dog in line of duty -- Immunity

7 (1) As used in this section:

8 (a) "Police dog" means a dog used by a law enforcement agency specially
9 trained for law enforcement work and under the control of a dog handler.

10 . . .

11 (c) "Dog handler" means a law enforcement officer who has successfully
12 completed training as prescribed by the Washington state criminal justice
13 training commission in police dog handling, or in the case of an accelerant
14 detection dog, the state fire marshal's designee or an employee of the fire
15 department authorized by the fire chief to be the dog's handler.

16 (2) Any dog handler who uses a police dog in the line of duty in good faith is
17 immune from civil action for damages arising out of such use of the police dog
18 or accelerant detection dog.

19 RCW 4.24.410.

20 There is no dispute that Officer Clary is a dog handler under the statute, who was using
21 Dex in the line of duty. However, plaintiff argues that this statute does not protect Officer Clary
22 because he was not acting in good faith. Specifically, plaintiff argues that Officer Clary did not
23 act in good faith when he allowed Dex to search for a suspect off lead in a public area where he
24 knew contact with the public was likely. Plaintiff further argues that Officer Clary was not
25 acting in good faith when he failed to announce that he was using a police dog. The Court is not
26 persuaded.

Plaintiff has failed to produced evidence that Officer Clary was not acting in good faith.
Even accepting plaintiff's assertion that Dex was off-lead and that Officer Clary, admittedly, did
not announce that he was using a police dog, there is no apparent violation of Federal Way

1 Police Department guidelines for the Canine ("K-9") Unit. (*See* Dkt. #26, Ex. 2). With respect
2 to on-lead requirements, the guidelines state:

3 When the apprehension includes a search, the K-9 handler will consider the
4 nature of the crime and likelihood of unintended or incidental contact with by-
5 standers when deciding whether to conduct the search *on or off lead*. An
6 announcement will be made whenever there is a likelihood that the suspect
7 being sought is hiding. *An announcement need not be given in circumstances*
8 *where doing so would endanger the safety of the K-9 Team.*

9 (Dkt. #26, Ex. 2 at ¶ D. 1. a. i.) (emphasis added). In this case, Officer Clary testified that being
10 on a dog track is one of the most dangerous times in police work because they do not know
11 where the suspect is, and the suspect has the opportunity to choose where to hide or set up an
12 ambush. (Dkt. #26, Ex. 1 at 46). He further testified that there are times when it is not
13 appropriate to warn about use of a police dog, such as when a suspect is hiding and the officer
14 has no visual of the suspect, such as the instant case. (Dkt. #26, Ex. 1 at 46-47). Plaintiff does
15 not rebut that testimony. Nor has plaintiff offered any evidence that conducting the late night
16 search off lead would have been unreasonable at the time. Accordingly, the Court finds that
17 Officer Clary is protected from liability under RCW 4.24.410.

18 However, even if Officer Clary's actions were not considered reasonable, there are other
19 reasons to dismiss plaintiff's state law claims against him. To prevail on a claim for intentional
20 infliction of emotional distress, or outrage, under Washington law, a plaintiff must prove:
21 (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress,
22 and (3) actual result to plaintiff of severe emotional distress. *Reid v. Pierce County*, 136 Wn.2d
23 195, 202 (1998); *Grimsby v. Samson*, 85 Wn.2d 52, 59-60 (1975). In *Grimsby*, the Washington
24 Supreme Court explained that a claim for intentional infliction of emotional distress must be
25 predicated on behavior "*so outrageous in character, and so extreme in degree, as to go beyond*
26 *all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a*
civilized community." 85 Wn.2d at 59 (quoting *Restatement (Second) of Torts* § 46 cmt. d)
(emphasis in original). Conduct must be that "which the recitation of the facts to an average

1 member of the community would arouse his resentment against the actor and lead him to
2 exclaim "Outrageous!"” *Reid*, 136 Wn.2d at 201-02 (quoting *Browning v. Slenderella Sys. of*
3 *Seattle*, 54 Wn.2d 440, 448 (1959)). The question of whether conduct is sufficiently outrageous
4 is generally a question for the jury; see *Seaman v. Karr*, 114 Wn. App. 665, 684 (2002);
5 however, this Court first determines if reasonable minds could differ on whether the conduct is
6 sufficiently extreme and outrageous to warrant such factual determination. *Pettis v. State*, 98
7 Wn. App. 553, 563-64 (1999). In this case, the Court finds that it does not.

8 In support of her claim, plaintiff relies on conclusory allegations rather than evidence.
9 She argues that “allowing a police dog to attack a pregnant and innocent passerby is extreme
10 and outrageous.” (Dkt. #25 at 13). The Court notes that there is nothing in the record
11 indicating that Officer Clary “allowed” Dex to bite plaintiff. Indeed, it is undisputed that he did
12 not command Dex to engage plaintiff in any manner, and that he immediately directed Dex to
13 release plaintiff when he saw that Dex had mistakenly engaged her. Further, there is no dispute
14 that Officer Clary had probable cause to pursue a fleeing suspect with his police dog, and that he
15 felt a sense of danger in the late-night pursuit. In addition, this Court has already determined
16 that none of plaintiff’s constitutional rights have been violated. Accordingly, the Court finds
17 that the conduct alleged by plaintiff to be outrageous cannot be regarded as atrocious and utterly
18 intolerable in a civilized community, and reasonable minds could not find that Officer Clary’s
19 actions constituted extreme or outrageous conduct.

20 Likewise, the Court finds that plaintiff’s false imprisonment claim must fail. “Unlawful
21 imprisonment is the intentional confinement of another’s person, unjustified under the
22 circumstances.” *Kellogg v. State*, 94 Wn.2d 851, 856 (1980). As discussed above, Officer
23 Clary did not intend to detain or “imprison” plaintiff, nor can Dex form the requisite intent.

24 Further, like false imprisonment, assault and battery are intentional torts. For the same
25 reasons as discussed above, Officer Clary did not have the intent to inflict bodily harm on
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1 plaintiff, nor can Dex form the requisite intent.

2 Finally, plaintiff alleges in her complaint that defendants' actions constitute negligent
3 infliction of emotional distress. While defendants have failed to raise any specific arguments
4 with respect to that claim, choosing only to address the alternative claim for intentional infliction
5 of emotional distress, the Court has already determined that Officer Clary is immune from
6 liability on all state law claims against him under RCW 4.24.410. Accordingly, that claim is also
7 properly dismissed.

8 b. Claim Against Federal Way

9 Plaintiff alleges that defendant Federal Way failed to properly train and supervise Officer
10 Clary, and by doing so, proximately caused her harm. To establish a *prima facie* case of
11 negligence, plaintiff must show a duty, breach of that duty, proximate causation and resulting
12 injury. *Hoffer v. State*, 110 Wn.2d 415, 421, (1988), *aff'd on rehearing*, 113 Wn.2d 148
13 (1989); *Gurno v. Laconner*, 65 Wn. App. 218, 228-29 (1992). In this case, plaintiff fails to
14 present any persuasive evidence as to the standard of care for training police officers, a breach of
15 that standard, or that such a breach proximately caused Dex to bite her. While plaintiff's expert
16 witness opines that the Federal Way Police Department's "bite and hold" policy is unreasonable,
17 that opinion rests primarily on the IACP National Law Enforcement Center's Model Policy for
18 Law Enforcement Canines. (Dkt. #27, Ex. B). That model policy, by its own language, is a
19 mere guideline, and is not a controlling legal or law enforcement standard. Plaintiff provides no
20 evidence of any controlling standard of care, or that Federal Way Police Department's training
21 or supervision of Officer Clary contravened that standard of care. Further, plaintiff has not
22 articulated what duty defendants owed to her, or how that was breached. Accordingly, the
23 Court finds that summary judgment in favor of defendants on plaintiff's failure to train claim is
24 appropriate.

6. Punitive Damages

Plaintiff has asked for punitive damages against defendants; however, such damages are not allowed under Washington law. *Steele v. Johnson*, 76 Wn.2d 750, 753 (1969). The only remaining determination in this case – a calculation of damages under Washington’s strict liability/dog bite statute – results from judgment in favor of plaintiff on a state law claim. As a result, punitive damages are not available to plaintiff.

7. Pre-Judgment Interest

Plaintiff has also requested relief in the form of pre-judgment interest on all special damages. Municipalities in Washington are immune from pre-judgment interest. *Sintra, Inc. V. City of Seattle*, 131 Wn.2d 640, 657 (1997); *Fosbre v. State*, 76 Wn.2d 255 (1969). Plaintiff has provided no argument to the contrary. Accordingly, as Federal Way is the only party left with a claim against it, pre-judgment interest is not available to plaintiff.

V. CONCLUSION

The Court, having reviewed the parties' motions for summary judgment, the responses thereto, the declarations and exhibits in support of those motions, and the remainder of the record, hereby **ORDERS**:

(1) Plaintiff's Motion for Partial Summary Judgment (Dkt. #19) is GRANTED.

Defendant City of Federal Way is strictly liable under RCW 16.08.040 for the damages caused when plaintiff was mistakenly bitten by Dex.

(2) Defendants' Motion for Summary Judgment (Dkt. #21) is GRANTED for the reasons set forth above. With the exception of her strict liability claim, all of plaintiff's claims are DISMISSED against defendants, and defendants John Clary and Jane Doe Clary are DISMISSED as defendants to this action.

(3) This case is NOT CLOSED. The amount of damages available to plaintiff under RCW 16.08.040 remains the sole issue to be determined at trial.

1 (4) The Clerk shall forward a copy of this Order to all counsel of record.

2 DATED this 18th day of July, 2007.

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5 RICARDO S. MARTINEZ
6 UNITED STATES DISTRICT JUDGE
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